



Commonwealth of Virginia
Virginia Information Technologies Agency

FRAME RELAY SERVICES

Date: February 1, 2005

Contract #: VA-010131-AAMV

Authorized User: State Agencies, Institutions and Public Bodies
as defined in the VAAP

Contractor: AAMVA, Inc.
4301 Wilson Boulevard
Suite 400
Arlington, VA 22203

FIN: 53-0172317

Contact Person Jeffrey Cheatham
703-908-5863

Term: March 12, 2005 – March 11, 2006

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Information:

Joe Parr, CPPO, VCO
Technical Contract Engineer
Phone: 804-371-5991
E-Mail: joe.parr@vita.virginia.gov
Fax: 804-371-5969

Doug Leslie
Phone: 804-371-5123
Email: doug.leslie@vita.virginia.gov
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

CONTRACT #VA-010131-AAMV
EXTRACT CHANGE LOG

[illegible]

**MODIFICATION #5
TO
CONTRACT NUMBER VA-010131-AAMV
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
AAMVA, INC.
(formerly AAMVAnet, Inc.)**

This MODIFICATION #5 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and AAMVA, Inc., hereinafter referred to as "AAMVA" or "Contractor" relating to the modification of the above Contract. This Modification #5 is hereby incorporated into and made an integral part of Contract VA-010131-AAMV, as modified.

Both of the above referenced parties agree to the following:

Reference: Page 8 of 15, Paragraph 26 entitled "Term":

The term of Contract VA-010131-AAMV shall be extended from March 12, 2005 through March 11, 2006.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-010131-AAMV and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE
TERMS AND CONDITIONS OF THE CONTRACT.**

AAMVA, INC.

BY: Jeffrey Cheatham

NAME: Jeffrey Cheatham

TITLE: Contracts Administrator

DATE: January 27, 2005

COMMONWEALTH OF VIRGINIA

BY: Joe A. Parr

NAME: Joe A. Parr

TITLE: Senior Sourcing Specialist

DATE: 1/31/05

**MODIFICATION #4
TO
CONTRACT NUMBER VA-010131-AAMV
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
AAMVA, INC.
(formerly AAMVANet, Inc.)**

This MODIFICATION #4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and AAMVA, Inc., hereinafter referred to as "AAMVA" or "Contractor" relating to the modification of the above Contract. This Modification #4 is hereby incorporated into and made an integral part of Contract VA-010131-AAMV, as modified.

Both of the above referenced parties agree to the following:

Reference: Page 11 of 15, Paragraph 34 entitled "Modifications":

Contractor represents that AAMVANet, Inc., a Virginia nonprofit corporation has merged with American Association of Motor Vehicle Administrators (AAMVA), a District of Columbia nonprofit corporation. AAMVA, Inc. has assumed all obligations and assets of AAMVANet, Inc. References to AAMVA, Inc. shall be construed to refer to the Contractor, whether such references are in the Contract or in any correspondence or any document relating thereto.

Both above referenced parties hereby agree that, henceforth, the above referenced Contract shall be referred to as Contract VA-010131-AAMV, between the Commonwealth of Virginia and AAMVA, Inc. (Contractor). All contractual documents and this Agreement, which formerly referred to AAMVANet, Inc. shall now indicate AAMVA, Inc., FEIN# 53-0172317.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-010131-AAMV and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

AAMVANET, INC.

BY: 

NAME: Patrice Aasmo

TITLE: Vice President, Service Delivery

DATE: 1/21/2004

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 1/28/04

**MODIFICATION #3
TO
CONTRACT NUMBER VA-010131-AAMV
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
AAMVANET, INC.**

This MODIFICATION #3 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and AAMVANet, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #3 is hereby incorporated into and made an integral part of Contract VA-010131-AAMV, as modified.

Both of the above referenced parties agree to the following:

Reference: Page 8 of 15, Paragraph 26 entitled "Term":

The term of Contract VA-010131-AAMV shall be extended from March 12, 2004 through March 11, 2005.

Reference: Page 11 of 15, Paragraph 34 entitled "Modifications":

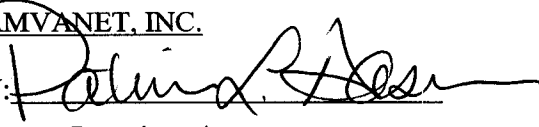
All references made to "Department of Information Technology" or "DIT" shall refer to "Virginia Information Technologies Agency" or "VITA." Both parties agree that although the name of VITA has changed, from the name Department of Information Technology to Virginia Information Technologies Agency, all Contract duties and obligations of the Contractor and the State have not changed.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-010131-AAMV and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

AAMVANET, INC.

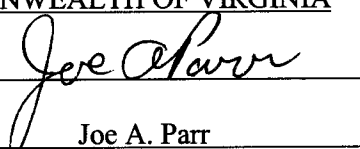
BY: 

NAME: Patrice Aasmo

TITLE: Vice President,
Service Delivery

DATE: January 9, 2004

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 1/13/04

**MODIFICATION #2
TO
CONTRACT NUMBER VA-010131-AAMV
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
AAMVANET, INC.**

This MODIFICATION #2 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and AAMVANET, INC., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-010131-AAMV.

The purpose of this Modification #2 is to document both parties' agreement concerning Contract renewal.

Reference: Page 8 of 15, Paragraph 26, entitled "TERM":

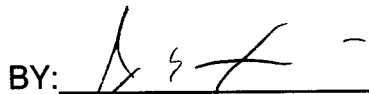
Both above-referenced parties hereby agree to extend the term of Contract VA-010131-AAMV from February 12, 2003 through February 11, 2004.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-010131-AAMV and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE
TERMS AND CONDITIONS OF THE CONTRACT.**

AAMVANET, INC.

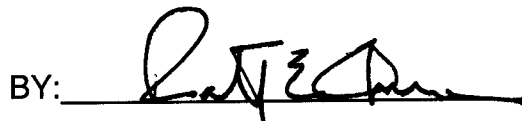
BY: 

NAME: John E. Maxwell, Jr.

TITLE: CIO

DATE: 1/16/2003

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Robert E. Gleason

TITLE: Technology Contracts Mgr

DATE: 1/21/2003

MODIFICATION #1
TO
CONTRACT NUMBER VA-010131-AAMV
BETWEEN THE 02 SEP 23 AM 10: 59
COMMONWEALTH OF VIRGINIA
AND
AAMVANET, INC.

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and AAMVANet, Inc., hereinafter referred to as "Contractor" relating to the modification of the above Contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-010131-AAMV, as modified.

The purpose of this Modification #1 is to document both parties' agreement concerning the addition of items to the Agreement.

Reference: Contract VA-010131-AAMV, Page 11, Paragraph 34 entitled "Modifications".

Both of the above referenced parties agree to the addition of the following items at the price indicated to Paragraph 2 entitled "Pricing" of Attachment "A" of the Contract:

<u>Item</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
Enhanced Router	1	\$180.00	\$180.00
IBM Mail Exchange Mailbox Fee	2	\$26.00	\$52.00
Software Mail Monthly Subscription Fee	4	\$25.00	\$100.00
User Id's on File	12	\$2.85	\$34.20

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-010131-AAMV and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

AAMVANET, INC.

BY: _____

NAME: JOHN E. MAXWELL JR

TITLE: SR VP + CIO

DATE: 9/18/02

COMMONWEALTH OF VIRGINIA

BY: _____

NAME: Joe A. Parr

TITLE: Contracts Engineer

DATE: 09/18/02

CONTRACT VA-010131-AAMV
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
AAMVAnet, INC.

02 FEB 12 AM 9:34

1. SCOPE OF CONTRACT

The following paragraphs contain the Contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State", or "DIT" (Department of Information Technology), will acquire Services as identified in Attachment "A" for the use by State Agencies, Institutions and other Public Bodies, as defined in Section 2.2-4301 *Definitions* of the Virginia Public Procurement Act (VPPA), as amended from AAMVAnet, Inc., hereinafter referred to as "the Contractor".

2. VENDORS MANUAL

This Contract is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet site (www.dgs.state.va.us/dps/).

3. APPLICABLE LAWS AND COURTS

This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

4. ANTI-DISCRIMINATION

The Contractor certifies to the Commonwealth that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, Services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in a. and b. below apply:

a. During the performance of this Contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

b. The Contractor will include the provisions of 1) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5. ETHICS IN PUBLIC CONTRACTING

The Contractor certifies that this Contract is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with this Contract, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, Services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

6. IMMIGRATION REFORM AND CONTROL ACT OF 1986

The Contractor certifies that it does not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

7. DEBARMENT STATUS

The Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from entering into Contracts for the type of goods Services covered by this Contract, nor are they an agent of any person or entity that is currently so debarred.

8. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or Services purchased or acquired by the Commonwealth of Virginia under said Contract.

9. PAYMENT

a. To Prime Contractor:

- 1) Invoices for Services ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the order/Contract. All invoices shall show the state Contract number and/or order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All Services provided under this Contract or order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

b. To Subcontractors:

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:

(a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

(b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

10. PRECEDENCE OF TERMS

Paragraphs 1-10 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions contained herein, the Special Terms and Conditions shall apply.

11. TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and Services conform to the specifications.

12. ASSIGNMENT OF CONTRACT

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

13. DEFAULT

In case of failure to deliver Services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.

14. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such

prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

15. NONDISCRIMINATION OF CONTRACTORS

A Contractor shall not be discriminated against in the award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, Services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, Services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, Services, or disbursements from an alternative provider.

16. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

17. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor in this Contract as to Services performance, or other physical design or functional characteristics of that which is offered.

18. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

19. SERVICES

During the term of this Contract, the vendor is not authorized to substitute any Service identified herein without the written permission of the Director, Acquisition Services Division, DIT. Violation of this condition shall be considered grounds for termination of the Contract.

20. SERVICE COMMENCEMENT DATES

- a. The Contractor shall deliver and install the Services identified in any Telecommunications Service Order (TSO) subsequent to award of this Contract within ten (10) days from receipt, or as otherwise stipulated in the TSO.

b. Any amendment by the State to this Contract, or any part thereof, may require the establishment of a new mutually agreed to required delivery date. The State may delay the installation date by notifying the Contractor at least ten (10) days before the required service commencement date.

c. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

21. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above.

22. NON-APPROPRIATION

All funds for payment of Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those Services for which

funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for Services dependent on such federal funds without further obligation.

23. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

24. ENTIRE AGREEMENT

This Contract, all Services specifically listed in Attachment "A", and the notes in Attachment "A" constitute the entire agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to equipment and/or software acquired by the State under the terms and conditions of this Contract.

No other written documents regardless of form or content shall be executed by any agency or institution for equipment acquired under this Contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

25. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

26. TERM

The term of this Contract shall be for a period of one year from the date of contract execution. At the mutual agreement of the Commonwealth and the Contractor, the Contract may be extended for three (3) additional one-year periods; pricing is also subject to mutual agreement. The Commonwealth will issue written documentation of its intent to extend the Contract to the Contractor a minimum of thirty (30) days prior to the end of each renewal period for any extension thereafter.

27. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

28. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

29. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the Services delivered under this Contract. In no event shall AAMVAnet be liable for any damages caused by the Commonwealth's failure to carry out its obligations, including but not limited to compliance with rules and regulations relating to AAMVAnet as in effect from time to time. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

The Contractor's liability shall be limited to and in no event shall exceed the total amount invoiced for the Commonwealth's use of the service to which the Commonwealth's claim relates for the 12 month period preceding the event giving rise to the Commonwealth's claim. AAMVAnet shall not in any event be liable for any damages claimed by the Commonwealth based on any third party claim.

30. ORDERING OFFICERS

DIT's authorized Ordering Officer's authority shall cover the issuance of written Telecommunications Service Order(s) (TSOs) for Services provided under this Agreement. The Ordering Officer's authority is limited to issuing written TSOs to deliver, activate or deactivate the specific Services available under this Agreement. Under no circumstances shall any Ordering Officer have the authority to modify this Agreement.

DIT appoints the Ordering Officers named below. The Contractor is hereby notified that the Commonwealth will only make payment only against valid TSOs executed by an authorized Ordering Officer and confirmed by the Contractor. The Contractor shall be advised in writing by the Contracts Manager, DIT or his appointed designee of any change in the identity of Ordering Officers.

Ordering Officers are Mr. Phil Johnson, Mr. Don Spangler, and Ms. Margaret Moran.

31. TELECOMMUNICATIONS SERVICE ORDER (TSO)

During the term of this Agreement, the Commonwealth may deliver written Telecommunications Services Orders (TSOs) to the Contractor. To be valid, the TSO must be signed by an Ordering Officer authorized to bind the Commonwealth contractually for telecommunications Services acquired under this Agreement. The TSO must identify the Service(s) to be acquired, the price for each Service, and the required Commencement Date for each Service. The Contractor shall provide a dedicated FAX number to receive all TSOs, and telephone numbers of both primary and backup ordering contracts.

Upon receipt of a TSO via either regular mail, facsimile or electronically, the Contractor shall provide acknowledgement of receipt of the TSO within 24 hours. The Contractor shall provide a written confirmation of each Order to DIT no less than 72 hours prior to DIT's requested due date. This written confirmation shall include but not limited to the following:

1. A verification of service to be provided, including phone or circuit numbers, and verification that the TSO is technically correct, and
2. The date the Services will begin, and
3. The Contractor's service order number, and
4. Name and telephone number for the Contractor contract for the TSO, and
5. A verification of the charge for each item (Service) to be provided

32. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All Services are subject to inspection and testing by the State, as delineated herein under TESTING AND INSPECTION, and any that does not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given seventy-two (72) hours from the completion of installation by the Contractor to test, evaluate and accept the Services delivered under this Contract (provided that the using agency, in its sole discretion, may accept the same prior to expiration of the seventy-two (72) hour period). If the Contractor's Services fail to meet the Contract specifications or other requirements or those required by the Contractor's own technical documentation, then the same may be rejected and returned to the vendor. Such rejection will terminate this Contract and exempt the State from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of determining title to that which is delivered and for making payment, however, acceptance by the State following testing and evaluation during the seventy-two (72) hour period shall not be conclusive that the Services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the State after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the Services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section

herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

33. SERVICES WARRANTY

All Services purchased under this Agreement remain under warranty for the time period commencing after acceptance by the Commonwealth and continuing to expiration of the Agreement, or discontinuance of the Services at the discretion of the Commonwealth.

Contractor shall deliver and maintain the Services as described herein. In addition, the Contractor shall provide a single point of contact for the reporting of Service problems encountered by the Commonwealth. The Contractor shall provide an "800" telephone number twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays for the reporting of Service problems.

34. MODIFICATIONS

This Contract may be modified in accordance with Section 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modification to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representative for the Commonwealth shall be the Contracts Manager, DIT or his duly designated alternate, and for the Contractor the person designated below. Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

The only representatives authorized to modify this Agreement on behalf of the Commonwealth and the Contractor are shown below.

CONTRACTOR

AAMVANet, Inc
4301 Wilson Boulevard
Suite 400
Arlington, VA 22203

COMMONWEALTH OF VIRGINIA

Contracts Manager
Dept. of Information Technology
Richmond Plaza Bldg., Lobby Level
110 South 7th Street
Richmond, VA 23219

35. INVOICES

All invoices shall be rendered monthly after all Services covered by the invoice have been accepted. No invoice may include any costs other than those identified herein. Invoices shall provide at a minimum:

1. Type and description of the Service;

2. Serial number, if any;
3. Charge for each item (Service);
4. This Contract Number, and;
5. Contractor's Federal Identification Number (FIN).

36. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this agreement, (a) the vendor shall fail to deliver the Services required by this Contract or (b) the vendor shall repeatedly fail to respond to requests for other Services within the time limits set forth in the Contract or (c) the vendor shall breach any of the other terms set forth within this agreement or (d) the vendor shall fail to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the vendor ten (10) days to cure the failure/nonperformance. If the vendor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the agreement for Default.

In such event, the Commonwealth will only be liable for cost incurred to the date of termination

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this agreement.

37. TERMINATION FOR CONVENIENCE

This Contract may be terminated, in whole or in part, upon thirty (30) days advance written notice by the Commonwealth of Virginia. There are no additional costs or financial obligations to the Commonwealth upon termination for convenience.

38. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the

claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or Services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support Services hereunder.

39. DOWNTIME CREDITS

The Commonwealth shall be rebated, or credited, a prorated hourly portion of the applicable monthly service charges for each occurrence during which the Commonwealth is denied use of the Service for eight (8) hours or more during any consecutive thirty (30) day period. The rebate shall apply to the initial eight (8) hours and all additional hours, or portions thereof, during which the Commonwealth is denied access to the Service. Contractor provided rebates or credits shall never exceed the cost of the Services. Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

AAMVAnet, INC.

BY: _____

NAME: Philippe Guiot

TITLE: Vicepresident

DATE: 2/08/02

COMMONWEALTH OF VIRGINIA

BY: _____

NAME: Joe A. Parr

TITLE Contracts Engineer

DATE: 2/12/02

ATTACHMENT "A"
TO
AGREEMENT VA-020131-AAMV
FOR THE
VIRGINIA DEPARTMENT OF INFORMATION TECHNOLOGY

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA-020131-AAMV between AAMVAnet, Inc. and the Commonwealth of Virginia. In the event of any inconsistency between the provisions of this Attachment "A" and Agreement Number VA-020131-AAMV, the provisions of Agreement Number VA-020131-AAMV shall control.

1. SERVICE DESCRIPTION

- Frame Relay 256Kb MAC with a 96K CIR
- One 96K PVCs to each of the two Intermediate Routers
- Dial Back-up Gateway (DBG) – ISDN Backup which includes one 56/64K PVC to each of the two (AAMVnet) Intermediate Catcher Routers.

2. PRICING

<u>Item Description</u>	<u>Unit</u>	<u>Rate</u>
256 Standard throughput – frame connection	Per month	\$2250.00
MDNA Installation	One-time	waived
DBG (Dial backup) 56/64 Kbps connection	Per month	\$175.50
DBG Installation	One-time	\$800.00
DBG PVC Installation	One-time	\$25.00

3. BILL TO ADDRESS

Department of Information Technology
Attn: Accounts Payable
110 South 7th Street, Third Floor
Richmond, VA 23219

4. COMMENCEMENT OF SERVICES

As indicated in individual TSO

5. AGENCY POINTS OF CONTACT

Doug Wilson
Telecommunications Division
(804) 371-5592
dwilson@dit.state.va.us

6. CONTRACTOR POINTS OF CONTACT

Mike Messerli
AAMVnet – Network Services
CCNP, CVoice, CATM, MCSE
MMesserli@aamva.org
(813) 643-6960 (Home Office)
www.aaamva.org